

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 125 of 1998

Jabalpur, this the 24th day of March 2003

Hon'ble Shri Shanker Raju -- Member (Judicial)
Hon'ble Shri R.K. Upadhyaya -- Member (Administrative)

Lakhanlal Biharia, aged 44
years, S/o. Shri Raghuvir Prasad
Biharia, B-34, SPM Colony,
Hoshangabad (MP).

... Applicant

(By Advocate - Sh. S.K. Nagpal)
V E R S U S

1. The Union of India,
Through : Secretary,
Ministry of Urban Development
(Works Division) Nirman
Bhawan, New Delhi.

2. The Director General of Works,
Central Public Works Deptt.,
Nirman Bhawan, New Delhi.

3. The Superintending Engineer,
Indore Central Circle,
Central P.W.D., Indore (MP).
... Respondents

(By Advocate - Shri S.C. Sharma)

O R D E R (ORAL)

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 30.8.96 whereby benefit of decision of Bombay Bench in OA-866/93 has been denied to him on the ground that it was restricted to applicant therein. He has sought placement in the pay scale of Rs.1640-2900 w.e.f. 1.1.1986 and in the scale of Rs.2000-3500 from 2.12.92 on completion of 15 years' service in the entry grade of Junior Engineer (JE) with all benefits.

2. Applicant who has been working as JE (Civil) initially appointed as Supervisor in Dandakaranya Project from 2.12.77 and was re-designated as JE from 29.9.83. Due to shrinkage in the establishment at the said Project

applicant was re-deployed and was permanently redeployed under the respondents on 17.1.90.

3. As per the instructions issued on 22.3.91 Junior Engineers shall be placed in the higher pay scale of Rs.1640-2900 on completion of five years in the entry grade as JE and further instead of promotion due to non-availability of vacancies JEs will be allowed the pay scale of AE of Rs.2000-3200 on personal basis after completion of 15 years of service. The claim for placement in these scales was effective from 1.1.86 and 1.1.91 respectively. In a similar OA decided on 19.7.97 in OA-866/93 by the Bombay Bench of this Tribunal similar claim was allowed except depriving the period rendered on a Project for the purposes of seniority. Applicant has sought through representation benefit of the same, which has been denied through impugned order, giving rise to the present OA.

3. It is contended by the learned counsel of applicant that the decision of the Mumbai/Bombay Bench is on all fours covers his case and merely because applicant has not been a party the same cannot be a ground to deprive him the benefit and undisputedly he is identically situated and similarly circumstanced. The aforesaid act of the respondents is stated to be in violation of the Articles 14 and 16 of the Constitution of India being discriminatory.

4. It is contended that respondents' order dated 22.3.91 clearly stipulates that after five years of service in entry grade subject to rejection of unfit and after completion of 15 years of total service in the grade of JE the pay is to be revised from 1.1.86

and 2.12.92 respectively. Applicant who has an excellent record of service without any adverse material cannot be deprived of the same benefit.

5. Respondents' counsel strongly rebutted the contentions of applicant and stated that though the impugned order is dated 30.8.96 based on a decision of Mumbai Bench of this Tribunal delivered on 19.7.95 applicant has approached this court beyond the period of limitation. However, it is further contended that DOPT memo dated 15.6.92 has clarified that JEs re-deployed in CPWD would not be entitled to count their past service for getting the benefit of two time scales given to JEs of CPWD under the Ministry of Urban Development. Accordingly, services of applicants are to be reckoned from the date he joined CPWD, which deprives him of the benefit.

6. We have carefully considered the rival contentions of the parties and perused the material on record. The decision of the Mumbai Bench has dealt with respondents' letter dated 22.3.91 and in that process though denied the benefit of service rendered in Project for seniority, accorded the benefit for all purposes, including accord of pay scales. We have also gone through the OM of DOPT which has been issued on the basis of the decision of the Apex Court in CA-6288 in Balbir Sardana v. Union of India. From the perusal of the aforesaid circular as well as decision of the APEX Court what transpires is that the issue regarding benefit of past service pertained to seniority and not to the pay scale. As applicant is identically situated he cannot be deprived of the

benefit of the past service for the purpose of according him benefit of pay scale as per the decision of respondents, re-iterated by this Tribunal at Mumbai. Applicant, who is on all fours covered by the decision and is equal in all respects cannot be denied the benefit of extension of this judgment, as held by the Apex Court in the following decisions:

- i) K.C. Sharma v. UOI, 1998 (1) SLJ SC 54.
- ii) Ajay Jadhav v. Govt. of Goa, 2000 (1) SLJ SC 223.
- iii) Chander Prakash Madhav Rao Dawda, v. UOI, 1998 (2) SCSLJ 390.

7. If one has regard to the aforesaid decisions of the Apex Court the decision of respondents dated 30.8.96 cannot be sustained.

8. In so far as the plea of limitation is concerned, as grant of pay scale involve accord of pay and allowances being recurring cause of action the ground of limitation taken cannot be sustained in the light of the Constitutional Bench decision of the Apex Court in K.C. Sharma's case (supra).

9. In the result, for the foregoing reasons, OA is allowed. Impugned order is quashed and set aside. Respondents are directed to place applicant in the pay scale of Rs.1640-2900 and Rs.2000-3500 w.e.f. 1.1.1986 and 2.12.1992 respectively and in that event he would be entitled to all the benefits. This would be in-consonance with the directions issued by the Mumbai Bench of this Court in OA-866/93. Respondents are directed to comply with these directions within a period of three months from the date of receipt of a copy of this order. No costs.

(R.K. Upadhyaya)
(R.K. Upadhyaya)

S. Raju
(Shanker Raju)
Member (I)

दूरांकन सं अ०/व्या.

प्रतिरिप्रेति

लखनऊ, दि.....

- (1) सचिव, उपर्युक्त
- (2) ~~सचिव विधायिका~~
- (3) उपर्युक्त विधायिका
- (4) उपर्युक्त, संसदी

दूरांकन सं प्रतिरिप्रेति

S.K. Nagpal, ACD
S.C. Sharma, ACD


S.K. Nagpal
2/4/83

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